



**Center for Clinical Standards and Quality/ *Quality, Safety & Oversight Group***

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**Ref: S&C: 17-15-LSC**

***REVISED: 10/20/2021***

**DATE:** December 16, 2016

**TO:** State Survey Agency Directors

**From:** Director, Quality, Safety & Oversight Group (QSOG)

**Subject:** Use of the Fire Safety Evaluation System (FSES), National Fire Protection Association (NFPA) 101A, Guide on Alternative Approaches to Life Safety, 2013 Edition by Health Care Occupancies and Board and Care Occupancies

**Memorandum Summary**

- **Fire Safety Requirements:** The Centers for Medicare & Medicaid Services (CMS) has adopted the 2012 Life Safety Code (LSC) and the 2012 Health Care Facilities Code (HCFC) through regulation (*see* 81 FR 26872, 5/4/16), effective July 5, 2016.
- **FSES Edition to be Used to Meet Fire Safety Requirements:** If the FSES is being used to demonstrate compliance with the fire safety requirements, the version of the FSES for Health Care Occupancies and Board and Care Occupancies found in the 2013 edition of the Guide on Alternative Approaches to Life Safety, NFPA 101A must be used. A facility that achieves a passing score on the 2013 edition of the FSES will be considered to meet the fire safety requirements for certification and recertification with the Medicare and Medicaid programs.
- **Survey Start Date:** CMS began surveying for compliance with the 2012 LSC and HCFC on November 1, 2016. Facilities may now use the 2013 edition of the FSES.
- **Time Limited Waiver for Corrective Action:** Long Term Care (LTC) facilities using the FSES may be granted a time limited waiver to correct certain deficiencies. *The amount of time to correct certain deficiencies is being extended for two additional years, to November 1, 2023.*

**Background**

The purpose of this memorandum is to notify the State Agencies (SA) and other stakeholders that CMS will be using NFPA 101A, Guide on Alternative Approaches to Life Safety, 2013 Edition (referred to here as 2013 FSES), as one method for determining LSC equivalencies *and that we are extending the amount of time to correct certain deficiencies to November 1, 2023.*

The 2013 FSES will be used in place of the 2001 FSES which was previously approved for use (Survey and Certification policy memorandum, S&C-03-21, dated May 8, 2003) with the 2000

LSC. The 2013 FSES has been updated by the NFPA and is calibrated to the requirements found in the recently adopted 2012 LSC. This will allow for a more accurate determination of LSC equivalencies.

### **Implementation**

As previously described in the Survey and Certification policy memorandum, S&C 16-29-LSC, CMS began surveying facilities for compliance with the 2012 edition of the LSC and HCFC on November 1, 2016. The time since the LSC rule's effective date and November 1, 2016 has allowed CMS the opportunity to train existing surveyors, revise fire safety survey forms, and update the Automated Survey Processing Environment (ASPEN) program.

For facilities that do not meet the prescriptive fire safety requirements of the 2012 LSC, they may use the 2013 FSES to achieve compliance with the Medicare and Medicaid fire safety requirements. The use of the FSES in this manner is not new, but CMS is updating which version of the FSES is to be used to demonstrate this equivalency. The FSES can be completed by the facility, a trained consultant, or by the SA at their discretion.

The 2013 FSES that is submitted by the facility for review to the SA, which then sends it to the *CMS Location* for final approval as part of the plan of correction (POC), must use the most recent annual LSC prescriptive survey of the facility completed by the SA as the basis of the FSES. A new FSES must be completed and submitted for review and approval each time the annual prescriptive LSC survey is completed by the SA and deficiencies are identified by the survey. This is to ensure that any deficiencies found on the survey are accounted for on the FSES and submitted as part of the facility's POC.

In the case of LTC facilities that utilize the FSES for Health Care Occupancies for compliance and do not achieve a passing score for the individual safety evaluation "Extinguishment Safety" (S2) (worksheet 4.7.9) requirements, the facility will be given a time-limited waiver of up to *seven years (to November 1, 2023)* to correct the deficiencies and come into compliance with the prescriptive requirements of the LSC; or achieve an overall passing score on the FSES, including a passing score for "Extinguishment Safety." To receive the time limited waiver, passing scores must be achieved in all other individual safety evaluations (worksheet 4.7.9). This time limited waiver may be granted one time as part of the *CMS Location* review of the FSES material submitted by the SA. The material submitted by the SA should include a copy of 2786R, Fire Safety Survey Report form, and the Form 2567, Statement of Deficiencies and Plan of Correction. The *CMS Location* shall keep a record of time limited waivers granted for this purpose and the date when the time limited waiver will end. This record of granted time limited waivers by the *CMS location* will be provided to the SA to track which facilities have been granted a time limited waiver. A facility that does not meet the requirements of the LSC or achieve a passing score on the 2013 FSES at the end of the time limited waiver will be subject to termination from the Medicare and Medicaid programs.

A facility that achieves a passing score on the 2013 FSES will be considered to meet the fire safety requirements for certification into the Medicare and Medicaid programs. The 2013 FSES can be used for surveys completed after November 1, 2016.

**Contact:** If you have questions concerning this memorandum, please send them to [SCG\\_LifeSafetyCode@cms.hhs.gov](mailto:SCG_LifeSafetyCode@cms.hhs.gov).

**Effective Date:** Immediately. The information provided in this memorandum should be communicated with all survey and certification staff, their managers, and the State/*CMS Location* Office training coordinators within 30 days of the date of this memorandum.

/s/

David R. Wright

cc: *Survey Operations Group Management*

*The contents of this letter support activities or actions to improve patient or resident safety and increase quality and reliability of care for better outcomes.*